1 2 3 4 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 5 AT SEATTLE 6 7 ROGER and ELISE MURRAY, 8 No. C12-1854RSL Plaintiffs, 9 ORDER GRANTING IN PART 10 SOUTHERN ROUTE MARITIME, S.A., PLAINTIFF'S MOTION TO EXCLUDE et al., EXPERT TESTIMONY 11 Defendants. 12 13 14 This matter comes before the Court on "Plaintiffs' Rule 37(c) Motion for Failure to Disclose." Dkt. # 36. Having reviewed the memoranda, declarations, and exhibits submitted 15 16 by the parties, the Court finds as follows: 17 Pursuant to the case management schedule issued by the Court on February 28, 18 2013, and Fed. R. Civ. P. 26(a)(2), the parties were to disclose and provide reports on or before 19 March 12, 2014, for "any witness [they] may use at trial to present" expert testimony. By operation of Fed. R. Civ. P. 26(a)(2)(D)(ii), "if the evidence is intended solely to contradict or 20 21 rebut evidence" offered by another party's expert, the disclosures and reports were due on April 22 11, 2014. Defendants chose not to provide expert reports on March 12, 2014, and plaintiffs

promptly moved to exclude the testimony of the three experts defendants identified. After the

briefing in this matter closed, defendants timely provided rebuttal expert reports. Dkt. # 57.

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The experts offered in rebuttal will be restricted "solely" to rebutting or 1 2 contradicting the expert testimony and opinions offered by the experts plaintiffs disclosed on 3 March 12, 2014. The rebuttal experts may not put forth their own theories or opinions regarding the cause or extent of Mr. Murray's injuries or his associated damages. These issues were long 4 part of this litigation, and if defendants had expert testimony that would support a favorable 5 story line, the testimony should have been disclosed in a report on March 12, 2014, so that 6 7 plaintiff would have an opportunity to develop rebuttal testimony. Having foregone the 8 opportunity to submit initial expert reports, the testimony of defendants' experts will be limited to explaining why the theories and opinions offered by plaintiffs' experts are unsound. 9 10 11 For all of the foregoing reasons, plaintiffs' motion to exclude expert witnesses is 12 GRANTED in part and DENIED in part. 13 14 Dated this 23rd day of April, 2014. 15 MWS Casnik 16 United States District Judge 17 18 19 20 21 22 23 24 25 26

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